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February 7, 2024

Nwamaka Anowi, Clerk of Court
United States Court of Appeals
for the Fourth Circuit
1100 East Main Street, 5th Floor
United States Courthouse Annex
Richmond, Virginia 23219

Re: *United States v. David Shanton*, No. 23-6604
(Response to the government's Rule 28(j) letter (ECF No.19-1))

Dear Ms. Anowi:

I write to respond to the government's Rule 28(j) letter (ECF No. 19-1). The government relies on *United States v. McDaniel*, 85 F.4th 176 (4th Cir. 2023) to argue that Maryland robbery cannot be committed recklessly. But *McDaniel* does nothing at all to advance the government's position.

In *McDaniel*, this Court held that federal assault on an officer with a dangerous weapon under 18 U.S.C. § 111(b), which incorporates the *federal* common law definition of assault, cannot be committed with the reckless use of force. 85 F.4th at 187. However, as this Court recognized in *United States v. Redd*, 85 F.4th 153, 169-70 (4th Cir. 2023), the *Maryland* common law definition of assault (incorporated into Maryland first degree assault) squarely includes a reckless battery. In *Redd*, relying on this Maryland common law definition, this Court held that Maryland first degree assault categorically fails to qualify as a "violent felony" under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B). *Id.*

From *Redd*, it necessarily follows that Maryland robbery, which likewise incorporates Maryland common law assault, can be committed by a reckless battery. See ECF No. 17. Thus, Maryland robbery categorically fails to qualify as an ACCA "violent felony" under *Borden v. United States*, 141 S. Ct. 1817 (2021).

Sincerely,

/s/

Paresh S. Patel
Assistant Federal Public Defender

CC: Jason Medinger, Assistant United States Attorney